

June 18, 1996

The Honorable Andy Mirikitani
Councilmember, City Council
City and County of Honolulu
Honolulu Hale
Honolulu, Hawaii 96813

Dear Mr. Mirikitani:

Re: Real Time Captioning of City Council Meetings and
Committee Meetings

This is in reply to your letter to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the above-referenced matter.

ISSUE PRESENTED

You have requested the OIP to advise you whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), computer diskettes containing electronic transcripts of meetings of the City Council ("Council"), and committees of the Council ("committees"), must be available for public inspection and copying.

BRIEF ANSWER

Yes. Subject to the exceptions in section 92F-13, Hawaii Revised Statutes, the UIPA requires each agency to make government records available for public inspection and copying upon request. The term "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993). Provided that computer diskettes containing real time captioning of public Council meetings are kept, stored, or retained by an agency of the City and County of Honolulu, the diskettes would be "government records" for purposes of the UIPA, since they contain information in some physical form.

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Under the UIPA, each agency must disclose, notwithstanding the exceptions to mandatory disclosure in section 92F-13, Hawaii Revised Statutes, "[i]nformation contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public." Haw. Rev. Stat. § 92F-12(a)(16) (1993) (emphases added).

For the reasons explained below, the OIP concludes that the computer diskettes containing transcripts of public Council meetings must be made available for public inspection and copying, upon request, under section 92F-12(a)(16), Hawaii Revised Statutes.

FACTS

Honolulu City Ordinance No. 94-37, effective June 8, 1994, provides for real time captioning of televised regular meetings of the Council and permits the real time captioning of any other televised meeting of the Council or its committees, at the discretion of the Council Chairperson.

The stated purpose of the ordinance is "to provide equal access to deaf and hard-of-hearing persons to council and committee meetings as part of the council's compliance with the Americans With Disabilities Act." Hon. Ord. No. 94-37, § 1.

Televised meetings of the Council and its committees are broadcast by Olelo, a community broadcasting cable television station. Real time captioning of Council or committee meetings is accomplished by a "captioner" who types the speaker's words into a computer during a Council or committee meeting. According to your letter to the OIP, the captioning is not only broadcast to viewers of Council meetings almost immediately, but also results in the production of a written transcript of the meeting that is stored on a computer diskette.

The Council issued a request for bids dated October 30, 1995 for an independent contractor to serve as "Director of Captioning Services" (hereinafter "Director"). The Director was to serve as a general contractor in hiring subcontractors to fulfill the personnel requirements of the request for bids. The scope of the job, as set forth in the request for bids, included "the production of proofed transcripts of all captioned broadcasts, in hard copy and/or diskette medium."

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The Council's request for bids indicated that the City has purchased the Eclipse brand C.A.T. and online captioning software that will be used by the Director and the Director's subcontractors. According to Mr. David Roth, formerly of your office, diskettes prepared using this software that contain transcripts of Council and committee hearings, will be in ASCII¹ format and will not require proprietary software to read.

Mr. Hank Raymond, an aide with your office, informed the OIP on May 15, 1996, that the City rescinded its request for proposals after only one bidder submitted a responsive proposal, and after the City determined that the proposal was non-responsive. Mr. Raymond also informed the OIP that the City is in the process of revising a request for proposals for a contractor to serve as the Director for real time captioning of Council meetings. Furthermore, Mr. Raymond further explained that under an informal agreement between the City Council and the City Clerk, the computer diskettes containing the written transcripts of Council meetings will be stored with the City Clerk, and that you plan to upload the written transcripts to your Home Page on the Internet to promote public access to this information. Finally, Mr. Raymond stated that while the City is currently revising a request for proposals, for purposes of this opinion, the OIP should assume that the diskettes delivered to the City by the Director will be the property of the City, or "works made for hire."

DISCUSSION

I. INTRODUCTION

The UIPA requires each agency to make government records available for public inspection and copying unless those records are protected from disclosure by one of the exceptions in section 92F-13, Hawaii Revised Statutes. See Haw. Rev. Stat. § 92F-11(b) (1993). The term "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (1993) (emphases added); Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 376 n.10 (1993).

¹ASCII stands for American Standard Code for Information Exchange.

Assuming that the computer diskettes containing the transcripts of Council meetings are stored with the City Clerk's Office as Mr. Raymond indicated, they would be "government records" for purposes of the UIPA because they contain information maintained by an agency in some physical form. See, e.g., OIP Op. Ltr. No. 93-17 at 8 (October 8, 1993) ("maintain" is defined to sweep as broadly as possible and means "to hold, possess, preserve, retain, store, or administratively control").

We now turn to an examination of whether the diskettes are protected from disclosure under the UIPA.

II. GOVERNMENT RECORDS THAT ARE PUBLIC DESPITE OTHER PROVISIONS OF THE LAW

In section 92F-12, Hawaii Revised Statutes, the Legislature set forth a list of government records (or information contained therein) that must be available for public inspection and copying during an agency's regular business hours "[a]ny provision to the contrary notwithstanding."²

Section 92F-12(a)(16), Hawaii Revised Statutes, requires an agency to make available for inspection and copying during regular business hours:

- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.

Haw. Rev. Stat. § 92F-12(a)(16) (1993) (emphases added).

Even those transcripts which are prepared for the Council by an independent contractor must be made available for inspection

²The Legislature stated that "[a]s to these records, the exceptions such as for personal privacy and for frustration of legitimate government purpose are inapplicable . . . [t]his list merely addresses some particular cases by unambiguously requiring disclosure." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

and copying. In OIP Opinion Letter No. 95-22 (Sept. 12, 1995), the OIP concluded that a transcript of a publicly conducted Hawaii Labor Relations Board proceeding must be made available for inspection and copying despite the fact that it was prepared under contract by a free-lance certified court reporter. In that opinion, the OIP observed that section 92F-12(a)(16), Hawaii Revised Statutes, had its genesis in recommendations made to the Legislature in the Report of the Governor's Committee on Public Records and Privacy (1987).³ In light of these recommendations, the OIP concluded that in adopting section 92F-12(a)(16), Hawaii Revised Statutes, the Legislature did not intend to require agencies to prepare transcripts of their public meetings, but instead determined that if such transcripts are prepared, that they be available for inspection and copying, any provision to the contrary notwithstanding.

Turning to a consideration of whether computer diskettes containing real time captioning of Council or committee meetings are "transcripts" within the meaning of section 92F-12(a)(16), Hawaii Revised Statutes, in construing a statute, our foremost duty "is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." Crosby v. State Dept. of Budget and Finance, 76 Hawai'i 332, 340 (1994). "The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning." Haw. Rev. Stat. § 1-14 (1995); see also Ross v. Stouffer Hotel Co. (Hawai'i Ltd., Inc.), 76 Hawai'i 454, 461 (1994) ("we give the operative words their common meaning, unless there is something in the statute requiring a different interpretation").

Webster's Ninth New Collegiate Dictionary 1252 (1988) defines "transcript" as:

1 a : a written, printed, or typed copy; esp
: a usu. typewritten copy of dictated or
recorded material **b :** an official or legal
and often published copy <a court reporter's
~>

³These recommendations are quoted at length in OIP Op. Ltr. No. 95-22 at 7.

Black's Law Dictionary 1342 (5th ed. 1979) defines
"transcript" as:

That which has been transcribed. A copy of
any kind, though commonly the term refers to
a copy of the record of a trial, hearing or
other proceeding.

. . .

. . . Word-for-word typing of everything
that was said "on the record" during the
trial. . . .

The pertinent City ordinance provides that the real time
captioning provided for by the ordinance shall "transcribe the
spoken words of each participant at the televised council or
committee meeting; and . . . [b]e visible on all properly
equipped televisions tuned to the televised council or committee
meeting." Hon. Ord. No. 94-37, § 2(b).

Although the diskettes are not "transcripts," the diskettes
hold "information contained in or compiled from a transcript
. . . of a proceeding open to the public." In OIP Opinion Letter
No. 92-13 (Aug. 13, 1992), in light of the commonly understood
meaning of the term "transcript" the OIP found no reason to treat
an audiotape recording of a public meeting of the State
Commission on Memorials for Veterans of the Korean and Vietnam
Conflicts any differently than a written "transcript" of such
meeting. OIP Op. Ltr. No. 92-13 at 4. The OIP stated that given
the broad definition of the term "government record" there was no
reason "to believe that the Legislature would have intended
section 92F-12(a)(16), Hawaii Revised Statutes, to result only in
the disclosure of written or paper records of public proceedings"
and "such a conclusion best effectuates the statutory
requirements and legislative purposes underlying the UIPA." Id.

Accordingly, the OIP concludes that computer diskettes that
contain a transcript of public meetings of the Council are
transcripts within the meaning of section 92F-12(a)(16), Hawaii
Revised Statutes.

Given our conclusion, it is not necessary for the OIP to

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examine whether any of the exceptions in section 92F-13, Hawaii Revised Statutes, would arguably protect the computer diskettes from disclosure,⁴ because the Legislature intended the records described by section 92F-12, Hawaii Revised Statutes, to be publicly available notwithstanding the UIPA's exceptions to required disclosure.

CONCLUSION

For the reasons explained above, the OIP believes that when kept, stored, or retained by a City agency, computer diskettes containing real time captioning of public meetings of the Council, or its committees, must be made available for public inspection and copying upon request. In particular, the OIP concludes that the computer diskettes contain "[i]nformation contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public." Haw. Rev. Stat. § 92F-12(a)(16) (1993).

Please contact me at 586-1404 if you should have any questions regarding this opinion.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Moya T. Davenport Gray
Director

HRJ:sc

⁴Given the public character of the transcripts, the OIP does not believe that the diskettes would be protected by any of the exceptions in section 92F-13, Hawaii Revised Statutes.